

EXPORT ADMINISTRATION AMENDMENTS ACT OF 1983

JULY 22, 1983.—Ordered to be printed

Mr. PRICE, from the Committee on Armed Services,
submitted the following

REPORT

[To accompany H.R. 3231]

[Including cost estimate of the Congressional Budget Office]

The Committee on Armed Services, to whom was referred the bill (H.R. 3231) to amend the authorities contained in the Export Administration Act of 1979, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill do pass.

The amendment (stated in terms of the page and line numbers of the bill as reported by the Committee on Foreign Affairs) is as follows:

Page 17, strike out line 1 and all that follows through page 20, line 2, and insert in lieu thereof the following:

MILITARILY CRITICAL TECHNOLOGIES

SEC. 109. Section 5(d) of the Act (50 U.S.C. App. 2404(d)) is amended by striking out paragraphs (4) through (6) and inserting in lieu thereof the following:

“(4) (A) The Secretary and the Secretary of Defense shall complete the integration of the list of militarily critical technologies into the commodity control list not later than April 1, 1985. The integration of the list of militarily critical technologies into the commodity control list shall be completed with all deliberate speed, and the Secretary and the Secretary of Defense shall report to the appropriate committees of the Congress, before April 1, 1985, any circumstances which would preclude the completion of the integrated list by that date. Any disagreement between the Secretary and the Secretary of Defense as to whether a good or technology on the list of militarily critical technologies should be integrated into the commodity control list shall be resolved by the President not later than November 1, 1984. Such integrated list shall in-

clude only a good or technology with respect to which the Secretary finds that countries to which exports are controlled under this section do not possess that good or technology, or a functionally equivalent good or technology and the good or technology or functionally equivalent good or technology is not available in fact to such a country from sources outside the United States in sufficient quantity and of comparable quality so that the requirement of a validated license for the export of such good or technology is or would be ineffective in achieving the purpose set forth in subsection (a) of this section, except in the case of a determination of the President with respect to goods or technology under subsection (f) (1) of this section. The Secretary and the Secretary of Defense shall jointly submit a report to the Congress, not later than April 1, 1985, on actions taken to carry out this subparagraph.

“(B) The General Accounting Office shall evaluate the efforts of the Secretary and the Secretary of Defense to integrate the list of militarily critical technologies into the commodity control list, and the feasibility of such integration. In conducting such evaluation, the General Accounting Office shall determine whether the foreign availability was used as a criterion in developing the commodity control list pursuant to subparagraph (A) and whether the completed list reflected the intent of the Congress in enacting this subsection. In conducting such evaluation, the General Accounting Office shall have access to all information relating to the list of militarily critical technologies. Not later than April 1, 1985, the General Accounting Office shall submit a detailed report to the Congress on the results of the evaluation conducted pursuant to this subparagraph.

“(C) The Secretary and the Secretary of Defense, in integrating the list of militarily critical technologies into the commodity control list pursuant to subparagraph (A), shall consider mechanisms to reduce the list of militarily critical technologies.

“(5) The Secretary of Defense shall establish a procedure for reviewing the goods and technology on the list of militarily critical technologies at least annually after the integrated list is completed pursuant to paragraph (4) (A), for the purpose of removing from the list of militarily critical technologies any goods or technology that are no longer militarily critical. The Secretary of Defense may, after the integrated list is so completed, add to the list of militarily critical technologies any good or technology that the Secretary of Defense determines is militarily critical. If the Secretary and the Secretary of Defense disagree as to whether any change in the list of militarily critical technologies by the addition or removal of a good or technology should also be made in the commodity control list, the President shall resolve the dis-

agreement not later than three months after the change is made in the list of militarily critical technologies.

"(6) The Secretary of Defense shall, not later than April 1, 1985, report to the appropriate committees of the Congress on efforts by the Department of Defense to assess the impact that the transfer of goods or technology on the list of militarily critical technologies to countries to which exports are controlled under this section has had or will have on the military capabilities of those countries."

EXPLANATION OF THE COMMITTEE AMENDMENT

The committee amendment is in the form of a substitute for section 109 of H.R. 3231 as reported by the Committee on Foreign Affairs. The amendment is explained in detail in the remainder of this report.

PURPOSE

The purpose of H.R. 3231 is to amend and extend the Export Administration Act of 1979. This Act, which expires on September 30, 1983, governs the export of a variety of commodities and technologies from the United States. H.R. 3231 would extend the authorities under the Act until September 30, 1985.

The purpose of the committee amendment to H.R. 3231 is to clarify the authority of the Secretary of Defense to develop and maintain the Militarily Critical Technologies List and to clarify the Secretary's role in the overall process of export controls for national security reasons.

BACKGROUND

H.R. 3231 was reported by the Committee on Foreign Affairs on June 22, 1983, and was sequentially referred to the Committee on Armed Services for a period ending not later than July 22, 1983, for consideration of such portions of section 109 of the bill as fall within the committee's jurisdiction.

The Committee on Armed Services has had a deep and long-standing interest in the issue of the transfer of strategic technology to other nations. As a consequence, the Panel on Technology Transfer was appointed earlier this year to assist the committee in its oversight function. This panel of the full committee was directed to examine the present state of the transfer of U.S. technology to foreign nations, particularly the Soviet Union and other Warsaw Pact nations, and to determine the impact of such transfer on the security of the United States. The panel was also directed to examine the progress of the Department of Defense in delineating a list of militarily critical technologies and the effectiveness of existing laws, including the Export Administration Act, in ensuring against the compromise of technologies that improve the defense capabilities of our adversaries.

The panel has conducted an extensive series of hearings on this matter. The committee received a report from the panel on its activities to date, and the committee relied heavily on the evidence presented by the panel in developing its recommendations.

OVERVIEW OF COMMITTEE RECOMMENDATIONS

The section of the bill referred to the committee—a very limited section within the context of the overall bill—addresses the list of militarily critical technologies. This list is developed and maintained by the Secretary of Defense and consists of those goods and technologies that he considers would significantly improve the military capabilities of our adversaries.

Related to this list—but within the jurisdiction of the Department of Commerce—is the Commodity Control List. This list is used to administer the export licensing system that restricts export of goods and technologies for national security, short supply, or foreign policy reasons. Only a portion of the Commodity Control List is related to items that are militarily critical and, therefore, controlled for national security reasons.

The section of the bill referred to the committee requires that the list of militarily critical technologies be integrated into the Commodity Control List by April 1, 1985.

The committee agrees with the requirement to integrate these two lists. In fact, one of the problems in integrating this list in the past has been disagreement between the Secretary of Commerce and the Secretary of Defense as to which items on the Militarily Critical Technologies List are appropriately included in the Commodity Control List. The committee recommends that this problem be resolved by referring disagreements to the President.

From an overall perspective, the committee believes that the bill as reported by the Foreign Affairs Committee would reduce the influence of the Secretary of Defense with regard to this list, first, by limiting the determination of whether or not a good or technology is available from a foreign source and, thereby, automatically decontrolled and, second, by specifying certain criteria for removing items from the list.

The committee recommendations would move the section slightly back toward the present situation—but not all the way. The committee recommends that determination of foreign availability be based on the availability of goods and technologies that reflect the same characteristics, performance and capabilities as the goods or technologies we are attempting to control.

The committee also recommends deleting certain criteria incorporated in the bill as reported by the Committee on Foreign Affairs that could lead to reductions in the list of militarily critical technologies. The committee supports the idea of reducing the list in order to provide better controls over a smaller number of truly high technology items. However, the committee believes the fundamental criteria for reducing or adding items on the list should be whether the items are militarily critical.

DISCUSSION

H.R. 3231, generally, amends and extends the Export Administration Act of 1979 which expires on September 30, 1983. This Act governs the export of a variety of goods and technologies from the United States. Experts may be controlled under the Act for national security, short supply or foreign policy reasons. A variety of agencies play a role in administering the Export Administration Act: Department of

Commerce, Department of State, U.S. Customs Service, and the Department of Defense.

The Department of Defense is primarily responsible for developing a list of critical technologies that if transferred to the Soviet Union or other members of the Warsaw Pact would significantly improve their military capabilities. The department also reviews license applications for exports of controlled commodities or technologies to these and other countries to determine if such exports would be detrimental to national security.

DESCRIPTION OF SECTION 109

Section 109 of H.R. 3231 is related to the issue militarily critical technologies. It would require the Secretary of Defense and the Secretary of Commerce to complete the integration of the items on the Militarily Critical Technologies List (prepared by the Department of Defense) into the Commodity Control List (prepared by the Department of Commerce and used to specify the items for which export licenses are required). The integrated list is to contain only goods and technologies for which no alternative foreign source can provide sufficient quantity or quality unless the President determines that the absence of controls would be detrimental to the national security of the United States. The section would require a report from the secretaries on the integration by April 1, 1985.

The section also contains criteria for excluding products from control in order to reduce the size of the list of militarily critical technologies. These criteria include:

- Goods and technology the transfer of which would not lead to a significant near-term improvement in the defense capabilities of the country to which the exports are controlled.

- A slow evolving technology.

- A technology that is not process-oriented.

- Components used in militarily sensitive devices that in themselves are not sensitive.

Section 109 would also require the General Accounting Office to evaluate the integration process and report to the Congress on its evaluation by April 1, 1985.

DISCUSSION OF COMMITTEE RECOMMENDATIONS

The committee does not disagree with the primary intent of section 109. The committee supports the general concept in H.R. 3231 of integrating the Militarily Critical Technologies List and the Commodity Control List and efforts to reduce the size of the list. However, a careful reading of section 109 led the committee to recommend some modest changes in the language of that section.

First, although the committee agrees that the two lists should be integrated, the bill as reported by the Committee on Foreign Affairs provides for no way to resolve disagreements between the Secretary of Defense and the Secretary of Commerce regarding the items that should be incorporated in the Commodity Control List. Currently, agreement has been reached on the vast majority of items. However, the complete integration of these two lists has not been accomplished

in the past, in part, because of such disagreements. The committee recommends that any disagreements between the secretaries regarding whether goods or technologies on the Militarily Critical Technologies List should be initially integrated into the Commodity Control List be resolved by the President by November 1, 1984—six months before the lists are to be fully integrated.

Second, because the Militarily Critical Technologies List is dynamically changing document, the committee recommends that a formal procedure be established by the Secretary of Defense for review of the contents of the list at least annually with a view toward reducing the number of items on the list or adding to the list items determined to be militarily critical. As with the case of the initial integration of the Militarily Critical Technologies List and the Commodity Control List, disagreements between the secretaries regarding whether items added to or removed from the Militarily Critical Technologies List should be added to or removed from the Commodity Control List should be resolved by the President within 3 months of the change to the Militarily Critical Technologies List.

Third, the committee recommends that, in determination of foreign availability, "functionally equivalent" goods and technologies be considered instead of "similar" goods and technologies that are available be of "comparable" quality instead of "sufficient" quality. The determination of foreign availability results in items not being placed on the Commodity Control List and, thereby, decontrolled. The committee believes that such decontrol should occur only if the same capabilities are available from some other source.

Section 109 permits incorporation of an item from the Militarily Critical Technologies List on to the Commodity Control List only if the item is not available to a controlled country from a foreign source. In effect, only militarily critical items that are not available from foreign sources may be subject to export restrictions. Under H.R. 3231, as reported by the Committee on Foreign Affairs, determination of foreign availability would be based on whether the country to which exports are controlled possesses the good or technology, or a similar good or technology, or has available, in fact, to it from foreign sources the good or technology, or a similar good or technology. Availability must be in sufficient quantity and of sufficient quality to offset the purpose of U.S. controls on the item.

The objective of the committee amendment is to clarify the meaning of "a similar good or technology". The committee amendment would base foreign availability on possession of the good or technology, or a functionally equivalent good or technology, or availability, in fact, from a foreign source of the good or technology, or a functionally equivalent good or technology. Because the list relates to goods and technologies that have a military as well as a civilian use, an item available from a foreign source would be "functionally equivalent" if the function it performs in a military use is equivalent, in terms of characteristics, performance and capabilities to the function of the U.S. item. For example, the United States may possess a computer capable of guiding a reentry vehicle that is small, light-weight, and capable of extremely fast and accurate calculations. The Soviets may possess a computer that is just as fast and accurate but is too large to

fit in a reentry vehicle. In this case, it would not be considered "functionally equivalent" in a military use.

Fourth, the committee agrees that the General Accounting Office should evaluate the efforts to integrate the lists and be given access to all information relating to the list of militarily critical technologies. However, section 109 of H.R. 3231 as reported by the Committee on Foreign Affairs also directs that the General Accounting Office be admitted to all meetings in the Executive Branch regarding the list. The committee believes such authorization to be unnecessary to conduct the evaluation and recommends that such authority not be granted.

Fifth, the committee supports the general effort to find mechanisms for reducing the Militarily Critical Technologies List. However, the specific criteria suggested by the Committee on Foreign Affairs could imply that the Congress intends that certain militarily critical technologies be removed because they happen to possess one of the characteristics listed as criteria for possible removal. The committee believes that the removal of items from the list should be based primarily on the assessment of military criticality, taking into account the level of comparable technology available to proscribed countries. Because the committee emphasizes the use of military criticality as a criterion for reducing the list, the committee recommends that the Secretary of Defense increase efforts to assess the effect on the military capabilities of proscribed countries if they were to receive items included on the Militarily Critical Technology List. The committee directs the Secretary of Defense to report by April 1, 1985, on such efforts.

OTHER PROVISIONS OF H.R. 3231

H.R. 3231 would make a number of other changes to the Export Administration Act of 1979. For example:

A validated license would not be required for exports to countries that maintain export controls cooperatively with the United States.

Items that are unilaterally controlled by the United States that have been approved for export to a country group for a one year period must be decontrolled for that country group, except for end-users identified in regulations.

Goods and technologies controlled for national security reasons must be decontrolled if foreign availability could not be eliminated through negotiations within 6 months.

All contracts entered into before the President imposes foreign policy export controls would be protected, except in cases where the controls relate to imminent acts of aggression, international terrorism, gross violations of human rights or nuclear weapons tests.

Foreign policy export controls, which today can be extended to U.S. subsidiaries, re-exports of U.S. products or exports of foreign origin products of U.S. technology, would be limited to items produced in the United States; and controls applied extra-territorially would require prior approval by Joint Resolution.

All contracts entered into before the President imposes short supply export controls would be protected.

Enforcement authority would remain in the Department of Commerce but Commerce enforcement officials would be authorized to execute search warrants, to make arrests, to search and seize commodities and to carry firearms, while limiting authority of Customs officers to detain and seize items only when they have received specific information about possible violations.

The bill was not referred to the Committee on Armed Services to consider the sections effecting these changes. Although the committee has not addressed these changes in its recommendation, silence should not be interpreted as necessarily implying agreement.

ADDITIONAL BACKGROUND INFORMATION

This section of the report discusses in greater detail additional background information that is helpful in understanding the committee's recommendations.

ORGANIZATIONAL RELATIONSHIPS AND RESPONSIBILITIES

The Department of Commerce has overall responsibility for controlling the transfer of technology and the implementation of the Export Administration Act of 1979. The department has jurisdiction over control and reexport of most commodities and unclassified technical data. The Department of Commerce prepares and maintains the Commodity Control List consisting of goods or commodities subject to export controls and awards or refuses license applications for the export of controlled commodities. Commerce has responsibility to educate U.S. businessmen on the specifics of foreign sales of critical technology. Its prime enforcement arm is the Office of Export Enforcement. Commerce refers violations of the Act to the Justice Department.

The Department of State advises the Department of Commerce on the foreign policy implication of export control and is the lead agency in the government's attempt to implement multilateral export controls. As such, the Department of State represents the United States at COCOM reviews and processing of cases. The Department of State has collateral responsibility of informing the United States and foreign businessmen on the particulars of technology sales and has responsibility to develop the International Traffic in Arms Regulations and the Munitions List which, for the most part, derive from the Arms Export Control Act. It consists of military articles (firearms, tanks, military vehicles, etc.).¹ The Department of State reviews the programs and itinerary of visiting scholars and exchange students and regulates VISAS for such individuals.

The Department of Defense, with the assistance of other pertinent agencies, develops and maintains the Militarily Critical Technologies List which contains descriptions of arrays of design and manufacturing know-how, keystone manufacturing, inspection and test equipment, and data which, because of its military significance, must be

¹ However, the ITAR contains controls on "technical data". The primary enforcement organization within the Department of State is the Office of Munitions Control.

controlled. The Department of Defense reviews the military and strategic impact of the release of technology/data/equipment and recommends to Commerce approval or disapproval of license requests requiring Department of Defense review. The Department of Defense assesses foreign availability of critical technology and participates in COCOM reviews.

The Department of Energy (controlling nuclear exports), Nuclear Regulatory Commission, National Aeronautics and Space Administration, and the National Bureau of Standards provide technical assistance and recommendations on questions concerning critical technology in their areas of expertise.

The Customs Service has been assigned export control enforcement responsibilities and recently initiated Operation Exodus—an aggressive program of domestic cargo searches and seizures and intelligence gathering operations at home and abroad. The objectives of Exodus are to assess the threat of technology loss to the security of the United States and to actively disrupt the illegal flow of technology. Customs works closely with the Commerce and the State Department in determining if outgoing items are approved for export and receives intelligence data from the intelligence agencies. Customs maintains strong liaisons with custom services of other countries and gathers intelligence on illegal technology transfer and diversions through these sources.

The intelligence/enforcement agencies (CIA, DIA, FBI, NSA) provide information to Customs, State, Commerce, and Defense relating to illicit technology transfer and diversions, foreign availability, and east-bloc technology targets. The Central Intelligence Agency has a capability to assess the extent of technology leakage.

The Coordinating Committee (COCOM) is a multinational body consisting of all NATO members (less Spain and Iceland) plus Japan established to coordinate the control of exports to the east bloc. The organization is unchartered and voluntary, with each decision requiring unanimous agreement. COCOM maintains a control list of about 150 items that is reviewed every three to four years. However, there is almost continuous activity at COCOM in Paris, as member nations bring "exception" cases for resolution. The U.S. Department of State is the lead agency for U.S. participation in COCOM activities, but it is supported at various times by all the previous listed agencies with the possible exception of Customs.

The Senior Interagency Group on the Transfer of Strategic Technology is a senior-level group made up of representatives of eighteen government agencies, including most of those agencies previously discussed. Its objective is to formulate policy and coordinate government action on technology transfer activities. Some subcabinet agencies (e.g., Customs) are represented as full members along with the parent agency (e.g., Treasury) in order to produce more direct communications and involvement in the effort. The Senior Interagency Group is chaired by the Under Secretary of State for Security Assistance, Science and Technology.

The President (by NSSD 1482, December, 1982) directed the National Security Council to develop a policy on technology transfer by the fall of 1983.

COMPARISON OF CONTROL LISTS

Various control lists affect the transfer of strategic technologies. The three major lists of interest are the Commodity Control List, the COCOM List, and the Militarily Critical Technologies List. Each is described in turn in this section of the report, and the relationship among the lists is discussed.

The Commodity Control List

The Commodity Control List is the document developed and used by the Department of Commerce to control exports. The list is publically available and can be used as a guide by potential exporters.

All items exported from the United States require an export license. Two types of export licenses exist: a general license and a validated license. Most commercial transactions involving U.S. exports (90-95 percent) of commodities and technical data may be conducted under a general license without the necessity of submitting a formal application or obtaining a license document for each transaction. The remainder of the transactions are subjected to a rigorous applications process in order to obtain a validated license. These latter transactions are listed in the Commodity Control List.

The Commodity Control List contains technologies, products, or commodities that are controlled for the following reasons: National security, short supply, foreign policy, nuclear nonproliferation, and crime control (foreign policy).

The Commodity Control List contains about 200 entries, many of which embody high technology. The entries are grouped into 10 categories:

Group:	Commodity
0	----- Metal working machinery.
1	----- Chemical and petroleum equipment.
2	----- Electrical and power-generated equipment.
3	----- General industrial equipment.
4	----- Transportation equipment.
5	----- Electronics and precision instruments.
6	----- Metals, minerals, and their manufacture.
7	----- Chemicals, metalloids, and petroleum products.
8	----- Rubber and rubber products.
9	----- Miscellaneous.

Each entry on the Commodity Control List contains a general description of the item controlled (including a listing or partial listing of the specific products or technologies), the countries for which validated licenses are required and, in some cases, value limitations on exports restricting the number of dollar value of items that may be exported.

For the purpose of export control, all foreign countries except Canada (for which minimal restrictions apply) are categorized into seven country groups. Most communist countries are included in country group Y. However, the People's Republic of China will be included in country group V with many Western nations; Romania (country group Q) and Hungary and Poland (country group W) have most favored nation status and are treated separately. Also treated separately is North Korea, Vietnam, Kampuchea, and Cuba (country group Z) to which most trade is embargoed.

The COCOM list

The United States has entered into multi-lateral agreements with the countries of NATO. (less Iceland and Spain) and Japan to place export controls on certain goods and technologies that are mutually agreed would significantly improve the military capabilities of the Soviet Union and other Warsaw Pact countries. The forum for the multi-lateral discussions is called COCOM (Coordinating Committee).

The COCOM list is developed through a largely informal process and is used to guide the individual COCOM countries in controlling exports. The COCOM list is not publically available, but the national lists of controlled items (such as the Commodity Control List) are based, in most cases, on the COCOM list and contain virtually identical information. The Department of State has the primary responsibility on the international level for maintaining the COCOM list. A formal list review is conducted once every three years and multi-lateral negotiations are conducted periodically as required.

The COCOM list consist of three parts :

An industry/commercial list containing dual-use items.

A munitions list containing all direct military-use items.

An atomic energy list containing sources of fissionable materials, reactors and reactor components.

The Militarily Critical Technologies List.

As originally conceived in the late 1970's, the Militarily Critical Technologies List was intended as an effort to develop a set of militarily critical technologies that would be small in number and relatively stable over time, that could have strict export controls applied to deny these technologies automatically to communist countries and that would ultimately replace the Commodity Control List and COCOM list. As work on the Militarily Critical Technologies List has proceeded, however, it has become more of a generic document listing critical technologies but, at the same time, describing why these technologies should be considered critical and which aspects of the technologies should be considered critical. It has been characterized as an encyclopedia to be used to supplement and support the Commodity Control List rather than as a separate list or one that eventually will replace the Commodity Control List.

The Militarily Critical Technologies List is a classified document (secret) in large part because of the sections related to the rationale discussing why an item should be considered critical. The document is developed and maintained by the Department of Defense.

Relationship among the three documents

Although considerable testimony before the committee focused on the problems inherent in three lists developed and used by different agencies, the contents and form of the documents are relatively consistent.

The Commodity Control List contains all of the items on the COCOM list. In fact, when agreement is reached to modify the COCOM list, the regulations promulgating the Commodity Control List are changed to conform to the informal international agreement. Some items appear on the Commodity Control List (currently about 30) that are unilaterally controlled for national security reasons by

the United States. The unilaterally controlled items have been reduced substantially; in the past, several hundred items were unilaterally controlled. The unilaterally controlled items receive a strict review, and substantial efforts in the past have been responsible for obtaining agreements with foreign governments to incorporate unilaterally controlled high technology items into the COCOM list. These efforts continue with regard to the remaining unilaterally controlled items.

Other items on the Commodity Control List are controlled for foreign policy or short supply reasons, not for national security reasons.

The Militarily Critical Technologies List and the Commodity Control List are largely similar with respect to items controlled for national security purposes. Some items controlled unilaterally by the United States for national security reasons are on the Militarily Critical Technologies List and the Commodity Control List but not on the COCOM list. The rationale contained in the Militarily Critical Technologies List is used to attempt to persuade our allies of the need for control and for inclusion in the COCOM list. Similarly, there are some technologies contained on the Militarily Critical Technologies List that are not found on the Commodity Control List or the COCOM list, primarily because of the more frequent updates in the Militarily Critical Technologies List.

Of course, items controlled because of short supply or for foreign policy reasons are not incorporated in the Militarily Critical Technologies List.

Given the current use of the Militarily Critical Technologies List as a generic document that is updated once a year as new technologies emerge as critical and as others become non-critical, it should not be identical to the Commodity Control List. Differences should be expected, and in fact, procedurally, the Militarily Critical Technologies List should incorporate changes before they are considered in the Commodity Control List or the COCOM list.

DEPARTMENTAL VIEWS

The need for the amendment recommended by the Committee on Armed Services and other issues related to H.R. 3231 were discussed during the course of hearings conducted by the committee on the issue of technology transfer, at which representatives from each of the affected departments provided their views.

COMMITTEE POSITION

The Committee on Armed Services, on July 20, 1983, a quorum being present, reported an amendment to section 109 of H.R. 3231, by voice vote.

FISCAL DATA

FIVE-YEAR COST PROJECTION

Pursuant to clause 7 of Rule XIII of the Rules of the House of Representatives, the committee attempted to ascertain annual outlay resulting from the bill during fiscal year 1984 and the four following fiscal year. The committee believes that its amendment will not appre-

ciably change the cost of the bill as reported by the Committee on Foreign Affairs.

DEPARTMENTAL COST ESTIMATE

The committee has not received any estimate of the costs that would be incurred as a result of the enactment of the recommended amendment.

CONGRESSIONAL BUDGET OFFICE ESTIMATE .

In compliance with clause 2(1)(3)(C) of Rule XI of the Rules of the House of Representatives, the estimate prepared by the Congressional Budget Office and submitted pursuant to section 403 of the Congressional Budget Act of 1974 is included hereafter:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., July 22, 1983.

HON. MELVIN PRICE,
*Chairman, Committee on Armed Services,
U.S. House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed the amendment to H.R. 3231, the Export Administration Amendments Act of 1983, as ordered reported by the House Committee on Armed Services, July 20, 1983.

The Committee's amendment modifies section 109 of H.R. 3231, which was sequentially referred to the Committee on Armed Services. These changes are not expected to result in any significant budget impact relative to the cost of H.R. 3231 as ordered reported by the Committee on Foreign Affairs. That version of H.R. 3231 included approximately \$126 million in each of the fiscal years 1984 and 1985 to carry out certain activities in the International Trade Administration. In addition, CBO estimated that an additional \$1 million to \$3 million in each of the fiscal years 1984 and 1985 would be required by a variety of agencies for additional reporting, administrative, and coordination requirements.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN, Director.

INFLATION-IMPACT STATEMENT

Pursuant to clause 2(1)(4) of Rule XI of the Rules of the House of Representatives, the committee attempted to determine the inflationary impact of the bill. The committee concludes that the bill in and of itself will have no significant inflationary impact.

OVERSIGHT FINDINGS

With reference to clause 2(1)(3)(D) of Rule XI of the Rules of the House of Representatives, the committee has not received a report from the Committee on Government Operations pertaining to this subject matter.

With reference to clause 2(b)(1) of Rule X of the Rules of the House of Representatives, the committee finds and recommends that the amendment to the section referred to the committee be enacted pursuant to its oversight responsibilities. It should be noted that the Committee on Armed Services will continue to exercise its oversight responsibilities regarding the provisions of H.R. 3231 not currently referred to the committee.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

The bill was referred to this committee for consideration of those provisions of section 109 of the bill as fall within the jurisdiction of this committee. The changes made to existing law by the bill as reported by the Committee on Foreign Affairs are shown on pages 36-71 of House Report 97-257, Part I.

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, the changes to subsection (d) of section 5 of the Export Administration Act of 1979 proposed by the Committee on Armed Services in section 109 of the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman) :

SECTION 5 OF THE EXPORT ADMINISTRATION ACT OF 1979

NATIONAL SECURITY CONTROLS

SEC. 5. (a) AUTHORITY.— * * *

* * * * *

(d) **MILITARILY CRITICAL TECHNOLOGIES.**—(1) The Secretary, in consultation with the Secretary of Defense, shall review and revise the list established pursuant to subsection (c), as prescribed in paragraph (3) of such subsection, for the purpose of insuring that export controls imposed under this section cover and (to the maximum extent consistent with the purposes of this Act) are limited to militarily critical goods and technologies and the mechanisms through which such goods and technologies may be effectively transferred.

(2) The Secretary of Defense shall bear primary responsibility for developing a list of militarily critical technologies. In developing such list, primary emphasis shall be given to—

- (A) arrays of design and manufacturing know-how,
- (B) keystone manufacturing, inspection, and test equipment,
- and
- (C) goods accompanied by sophisticated operation, application, or maintenance know-how.

which are not possessed by countries to which exports are controlled under this section and which, if exported, would permit a significant advance in a military system of any such country.

(3) The list referred to in paragraph (2) shall be sufficiently specific to guide the determinations of any official exercising export licensing responsibilities under this Act.

[(4) The initial version of the list referred to in paragraph (2) shall be completed and published in an appropriate form in the Federal Register not later than October 1, 1980.

[(5) The list of militarily critical technologies developed primarily by the Secretary of Defense pursuant to paragraph (2) shall become a part of the commodity control list, subject to the provisions of subsection (c) of this section.

[(6) The Secretary of Defense shall report annually to the Congress on action taken to carry out this subsection.]

(4) (A) *The Secretary and the Secretary of Defense shall complete the integration of the list of militarily critical technologies into the commodity control list not later than April 1, 1985. The integration of the list of militarily critical technologies into the commodity control list shall be completed with all deliberate speed, and the Secretary and the Secretary of Defense shall report to the appropriate committees of the Congress, before April 1, 1985, any circumstances which would preclude the completion of the integrated list by that date. Any disagreement between the Secretary and the Secretary of Defense as to whether a good or technology on the list of militarily critical technologies should be integrated into the commodity control list shall be resolved by the President not later than November 1, 1984. Such integrated list shall include only a good or technology with respect to which the Secretary finds that countries to which exports are controlled under this section do not possess that good or technology, or a functionally equivalent good or technology, and the good or technology or functionally equivalent good or technology is not available in fact to such a country from sources outside the United States in sufficient quantity and of comparable quality so that the requirement of a validated license for the export of such good or technology is or would be ineffective in achieving the purpose set forth in subsection (a) of this section, except in the case of a determination of the President with respect to goods or technology under subsection (f) (1) of this section. The Secretary and the Secretary of Defense shall jointly submit a report to the Congress, not later than April 1, 1985, on actions taken to carry out this subparagraph.*

(B) *The General Accounting Office shall evaluate the efforts of the Secretary and the Secretary of Defense to integrate the list of militarily critical technologies into the commodity control list, and the feasibility of such integration. In conducting such evaluation, the General Accounting Office shall determine whether foreign availability was used as a criterion in developing the commodity control list pursuant to subparagraph (A) and whether the completed list reflected the intent of the Congress in enacting this subsection. In conducting such evaluation, the General Accounting Office shall have access to all information relating to the list of militarily critical technologies. Not later than April 1, 1985, the General Accounting Office shall submit a detailed report to the Congress on the results of the evaluation conducted pursuant to this subparagraph.*

(C) *The Secretary and the Secretary of Defense, in integrating the list of militarily critical technologies into the commodity control list pursuant to subparagraph (A), shall consider mechanisms to reduce the list of militarily critical technologies.*

(5) *The Secretary of Defense shall establish a procedure for reviewing the goods and technology on the list of militarily critical technologies at least annually after the integrated list is completed pursuant to paragraph (4) (A), for the purpose of removing from the list*

of militarily critical technologies any goods or technology that are no longer militarily critical. The Secretary of Defense may, after the integrated list is so completed, add to the list of militarily critical technologies any good or technology that the Secretary of Defense determines is militarily critical. If the Secretary and the Secretary of Defense disagree as to whether any change in the list of militarily critical technologies by the addition or removal of a good or technology should also be made in the commodity control list, the President shall resolve the disagreement not later than three months after the change is made in the list of militarily critical technologies.

(6) The Secretary of Defense shall, not later than April 1, 1985, report to the appropriate committees of the Congress on efforts by the Department of Defense to assess the impact that the transfer of goods or technology on the list of militarily critical technologies to countries to which exports are controlled under this section has had or will have on the military capabilities of those countries.

SUMMARY

PURPOSE

The purpose of H.R. 3231 is to amend and extend the Export Administration Act of 1979. This Act, which expires on September 30, 1983, governs the export of a variety of commodities and technologies from the United States. H.R. 3231 would extend the authorities under the Act until September 30, 1985.

The purpose of the committee amendment to H.R. 3231 is to clarify the authority of the Secretary of Defense to develop and maintain the Militarily Critical Technologies List and to clarify the Secretary's role in the overall process of export controls for national security reasons.

FISCAL DATA

The Committee on Armed Services believes that its amendment will not appreciably change the cost of the bill as reported by the Committee on Foreign Affairs.

DEPARTMENTAL POSITION

The Department of Defense and other Executive Branch departments have provided their views on H.R. 3231 during hearing on the issue of technology transfer. Although section 109 of the bill represents only a small portion of the entire legislation, the department's position was considered in formulating the recommendations of the Committee on Armed Services.

COMMITTEE POSITION

The Committee on Armed Services, on July 20, 1983, a quorum being present, reported an amendment to section 109 of H.R. 3231, by voice vote.

